

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN SENATE MAY 23, 2003

AMENDED IN SENATE MAY 8, 2003

AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 1022

Introduced by Senator Perata

February 21, 2003

An act to add Title 2.97 (commencing with Section 1812.700) to Part 4 of Division 3 of the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1022, as amended, Perata. Debt collectors.

Existing law prohibits certain actions by debt collectors in connection with the collection of consumer debts.

This bill would, *beginning July 1, 2004*, require 3rd-party debt collectors to provide notice to debtors, with the first written notice sent to the debtor in connection with the collection of a debt, that sets forth the debtor's rights, as specified, under the federal Fair Debt Collection Practices Act. A debt collector who fails to provide that notice would be liable for damages and a civil penalty, as *under specified provisions*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

1 (a) The federal government provides little oversight of the debt
2 collection industry.

3 (b) While existing law imposes various responsibilities on debt
4 collectors, the State of California no longer requires the licensure
5 of debt collectors and collection agencies as it did pursuant to
6 Chapter 8 (commencing with Section 6850) of Division 3 of the
7 Business and Professions Code before those provisions became
8 inoperative.

9 SEC. 2. Title 2.97 (commencing with Section 1812.700) is
10 added to Part 4 of Division 3 of the Civil Code, to read:

11
12 TITLE 2.97. CONSUMER COLLECTION NOTICE
13

14 1812.700. (a) In addition to the requirements imposed by
15 Article 2 (commencing with Section 1788.10) of Title 1.6C,
16 third-party debt collectors subject to the federal Fair Debt
17 Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall
18 provide a notice to debtors ~~in at least 12-point type~~ that shall
19 include the following description of debtor rights ~~under the federal~~
20 ~~Fair Debt Collection Practices Act:~~

21
22 ~~“The following are some of your rights under the federal Fair Debt~~
23 ~~Collection Practices Act. If the third-party debt collector who~~
24 ~~contacts you violates any of these rights please contact the~~
25 ~~Attorney General at _____, or the Federal Trade Commission at~~
26 ~~_____.~~

27 ~~How may a debt collector contact you?~~

28
29 ~~A debt collector may contact you in person or by mail, telephone,~~
30 ~~telegram, or fax. You may not be contacted by postcard. A debt~~
31 ~~collector may not contact you at inconvenient times or places, such~~
32 ~~as before 8 a.m. or after 9 p.m., unless you agree. A debt collector~~
33 ~~may not contact you at work if the collector knows that your~~
34 ~~employer disapproves of those contacts.~~

35
36 ~~Can you stop a debt collector from contacting you?~~

37
38 ~~After receiving a letter from you telling the collector to stop~~
39 ~~contacting you, the debt collector may not contact you except to~~
40 ~~say that there will be no further contact or to notify you that the~~



~~debt collector or creditor intends to take some specific action.~~

~~May a debt collector contact anyone else about your debt?~~

~~If you have an attorney, the debt collector must contact the attorney, rather than you. A debt collector may contact a third party only to find out your address, telephone number, or employer. The debt collector may not tell anyone, other than you and your attorney, that you owe money.~~

~~What must the debt collector tell you about the debt?~~

~~Within five days after first contacting you, the debt collector must send you a written notice telling you the amount you owe, the name of the creditor, and the action to take if you believe you do not owe the money.~~

~~May a debt collector continue to contact you if you believe you do not owe money?~~

~~A debt collector may not contact you if, within 30 days after receiving the written notice, you send the collector a letter stating that you do not owe the money. A debt collector may renew collection activities if it sends you proof of the debt.~~

~~What types of debt collection practices are prohibited?~~

~~Harassment. Debt collectors may not harass, oppress, or abuse you or any third parties they contact. Specifically, debt collectors may not use threats of violence or harm; publish a list of consumers who refuse to pay their debts, except to a credit bureau; use obscene or profane language; or repeatedly use the telephone to annoy you or a third party.~~

~~False Statements. Debt collectors may not use any false or misleading statements. Specifically, debt collectors may not falsely imply that they are attorneys or government representatives; falsely imply that you have committed a crime; falsely represent that they operate or work for a credit bureau; misrepresent the amount of your debt; indicate that papers being~~

~~sent to you are legal forms when they are not; indicate that papers being sent to you are not legal forms when they are; state that you will be arrested if you do not pay your debt; threaten to seize, garnish, attach, take, or sell your property or wages, unless the debt collector or creditor intends to take those actions and it is legal to do so; falsely state that legal action will be taken against you; give false credit information about you to anyone, including a credit bureau; send anything that looks like an official document from a court or government agency when it is not; or use a false name.~~

~~Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt. Specifically, a debt collector may not collect any amounts greater than your debt, unless those amounts are otherwise authorized by law; deposit a postdated check prematurely; or use deception to make you accept collect calls or pay for telegrams.~~

~~What control do you have over payment of debts?~~

~~If you owe more than one debt, any payment you make must be applied to the debt you indicate. A debt collector may not apply a payment to any debt you believe you do not owe.”~~

~~:~~

“The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.”

(b) The notice shall be included with the first written notice sent to the initially addressed to a California address of a debtor in connection with collecting the debt by the third-party debt collector.

(c) If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, the a notice shall be provided to the debtor in that language within five working days.

~~1812.701. (a) Any debt collector who violates this title with respect to any debtor shall be liable in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.~~

~~(b) Any third-party debt collector who willfully and knowingly violates this title with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, be liable for a penalty in an amount determined by the court, which may not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).~~

~~(c) In any action to enforce any liability under this title, the prevailing plaintiff shall be entitled to costs of the action. Reasonable attorney's fees, which shall be based on time necessarily expended to enforce the liability, shall be awarded to a prevailing debtor.~~

~~1812.701. (a) The notice required in this title may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) that would otherwise make the disclosure inaccurate.~~

~~(b) The type-size used in the disclosure shall be in at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type.~~

~~1812.702. Any violation of this act shall be considered a violation of the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)).~~

~~SEC. 3. The provisions of this act shall become operative on July 1, 2004.~~